THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 1283 of 2004

O r d e r:

The petitioner joined as Clerk in the respondents-Syndicate Bank in 1974. He was later promoted to Scale-I and MMG-II. In 1994 for certain acts of misconduct, including moral turpitude, an enquiry was conducted. Based on the findings of the enquiry report, the petitioner was removed from service on 29.05.1995. Pursuant to the directions dated 21.06.1996 of the Commission for Scheduled Castes and Scheduled Tribes, the order of removal was set aside and a *de novo* enquiry was conducted. Based on the *de novo* enquiry report, the petitioner was dismissed from service on 09.11.1998. The petitioner applied for grant of compassionate pension and the same was rejected vide order dated 31.08.2001. His request for payment of gratuity was also rejected vide orders dated 15.11.1999 of the primary authority, as confirmed in appeal vide order dated 02.01.2002 of the appellate authority. Assailing these orders, the petitioner filed the present writ petition.

The learned counsel for the petitioner submitted that when the Head Office vide Circular No. 226/95/BC/PD/61/SWD, dated 04.11.1995, called for exercise of option for compassionate pension from its employees on or before 26.01.1996, the petitioner having been removed from service vide order dated 29.09.1995, was out of employment, and therefore, he could not opt for compassionate pension, and as such, the action of the respondents in rejecting his request for compassionate pension on the ground that he has not opted for compassionate pension, is illegal and arbitrary.

He submitted that as per Rule 8(I)(ii) of Payment of Gratuity (Central) Rules, 1972, payment of gratuity can be denied only if an employee has been terminated for any act, which constitutes an offence, including moral turpitude, provided such offence is committed by him in the course of employment. He submits that inasmuch as there is no finding in the departmental enquiry or by any competent criminal Court that the acts of proved misconduct, involving moral turpitude, were committed by him

during the course of employment, denying him gratuity is illegal and arbitrary. He, thus prayed that the order of the primary authority, as confirmed by the appellate authority, rejecting his request for payment of gratuity, be set aside.

The respondents filed detailed counter. The learned Standing Counsel for the respondents reiterated the counter averments. She submitted that the petitioner did not opt for compassionate pension. As per Regulation 31(1) of Syndicate Bank Employees Pension Regulations, 1995, an employee who is dismissed or removed or terminated from service, shall forfeit his pension, except in deserving cases, where the authority higher than the authority competent to dismiss or remove or terminate, grants compassionate allowance, which shall not exceeding two-thirds of the pension. The petitioner was charge sheeted on four occasions, for accepting bribe/illegal gratification, committing irregularities in credit portfolio, financial indiscipline and fraud/misappropriation. For the last charge involving fraud, the petitioner was arrested and ultimately convicted by the CBI Court at Visakhapatnam. As the misconduct alleged against the petitioner, which involved moral turpitude, were committed by him during the course of employment, which resulted in his dismissal from service, the respondents having regard to Section 4(6) of Payment of Gratuity Act, 1972, refused payment of gratuity, and no exception can be taken thereto, and more so for the said charge.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

When the Head Office of the Syndicate Bank vide Circular No.226/95/BC/PD/61/SWD, dated 04.11.1995, called for exercise of option by its employees for compassionate pension on or before 26.01.1996, the petitioner admittedly, was not in employment of the respondents, for he was removed from service vide order dated 29.09.1995, and therefore, he could not exercise its option. Though the petitioner pursuant to the directions dated 21.06.1996 of the Commission for Scheduled Castes and Scheduled Tribes was reinstated into service, the fact remains, the petitioner did not take any steps/make any efforts to exercise his option for compassionate pension, though after his reinstatement into service, he worked with the respondents till he was dismissed from service on 09.11.1998 after a *de novo* enquiry. The petitioner having not taken any steps/made any efforts to exercise his option for compassionate pension, at least during the period of two years when he was in employment of the respondents, namely from

the date of his reinstatement into service pursuant to the orders of the Commission for Scheduled Castes and Scheduled Tribes till he was dismissed from service after a *de novo* enquiry, cannot contend that the action of the respondents in rejecting his request for grant of compassionate pension, is illegal and arbitrary. This apart Regulation 31(1) of Syndicate Bank Employees Pension Regulations, 1995, states that an employee who is dismissed or removed or terminated from service, shall forfeit his pension, and inasmuch as the petitioner was dismissed from service, he is dis-entitled from claiming compassionate pension. Therefore, no exception can be taken to the order dated 31.08.2001 passed by the respondents rejecting the request of the petitioner for compassionate pension.

Pursuant to his dismissal from service, the petitioner on 13.09.2001 made an application to the Chairman and Managing Director of Syndicate Bank, for payment of gratuity. The said request, was rejected by the primary authority as confirmed by the appellate authority. Though the petitioner contends that he was not removed from service for acts committed during the course of employment, and the acts of misconduct alleged against him, do not involve moral turpitude, and more so when there is no finding to that effect either in the disciplinary enquiry or by the competent criminal court, and as such, the order passed by the primary authority as confirmed by the appellate authority, denying him gratuity, is illegal and arbitrary, the fact remains, the petitioner was charged-sheeted on four occasions. The charges of misconduct alleged against the petitioner, are accepting bribe/illegal gratification, committing irregularities in credit portfolio, financial indiscipline and committing fraud/misappropriation. All these acts of misconduct, which constitute moral turpitude, it is contended by the respondents, were committed by the petitioner during the course of his employment. This apart, on the proved charge of fraud/misappropriation, which was committed by the petitioner during the course of employment, he was dismissed from service, and the said charge having been proved in the criminal case, the petitioner was convicted by the CBI Court at Visakhapatnam. Inasmuch as the acts of misconduct, involving moral turpitude said to have been committed by the petitioner during the course of his employment with the respondents, for which act he was dismissed from service and also convicted by the CBI Court at Visakhapatnam, having regard to the provisions of Section 4(6) of Payment of Gratuity Act, 1972 which prohibits payment of gratuity to employees whose services have been terminated for the acts of misconduct mentioned therein,

committed during the course of employment, I am of the opinion that no exception can be taken to the order dated 15.11.1999 passed by the primary authority, as confirmed by the appellate authority in appeal vide order dated 02.01.2002, refusing to grant gratuity.

For the foregoing reasons, there is no merit in the writ petition, and the same is accordingly dismissed. No costs.

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N.V. RAMANA, J.

Date: 09th March, 2006.

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